

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

January 5, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 24, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are evaluating the sales and use tax responsibilities of one of our clients, a mail order retailer. As part of our analysis, we need to determine if your state imposes a sales or use tax on product catalogs. Although many states have taken a position on the matter in the context of D.H. Holmes Co. Ltd. v. McNamara, 486 U.S. 24, not all of the following is entirely clear to us.

Please respond to the following and provide the appropriate technical authority for your decision:

- A. Assuming that the retailer has agency nexus with your state, does your state impose a tax on catalogs sent into the state via common carrier or U.S. mail from outside the state?
- B. Assuming the retailer does not have nexus with your state, but the third-party printer of the catalogs does have nexus in your state, does your state impose a tax on catalogs sent by the printer into the state from outside of the state to customers of the retailer which reside in your state?
- C. Same as above except the printer sends the catalogs to customers in your state from within the state.
- D. If the catalogs are subject to tax, explain what costs are included in the tax base.
  - For example, the printer has a variety of charges, including, ink, paper, typesetting, printing, and mailing. Would the tax only apply to the tangible personal property (ink and paper), or would it also apply to any of the other charges imposed by the printer?
  - In addition, there may be other costs incurred by the retailer such as photography, design, freight, and postage, some of which are paid to different third-parties, some of which are internal costs, but none of which

are for purchases of tangible personal property. Which, if any, of these costs would be subject to tax?

Thank you for your assistance. Please call me if you have any questions.

Under the Illinois Use Tax Act, donors who purchase tangible personal property (such as advertising brochures or catalogs) and give it away make a taxable use of the donated property. "Use" is defined as the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. See subsection (a) of the enclosed copy of 86 Ill. Adm. Code 150.201.

If the donor's use occurs in Illinois, the donor incurs Use Tax liability (or potentially Service Use Tax liability for custom printed materials). If the advertisements are mailed by U.S. Mail into Illinois, your client, even though it is donating the advertising materials to Illinois recipients, has exercised no power or control over the property in Illinois. Your client would not have made any taxable use of the property in Illinois.

This tax analysis would change if your client were to have any control over the property in Illinois. For example, if your client were to have power of recall over the property once it entered Illinois, your client may incur a Service Use Tax liability in Illinois.

When a printing company contracts to print custom printed marketing literature, a special order printing situation exists and liability is incurred under the Service Occupation Tax Act. Who is liable for the tax in these situations depends upon the method chosen by the printer in calculating his Service Occupation Tax liability. See 86 Ill. Adm. Code 130.2000 and 140.101, enclosed.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

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MAJ:msk  
Enc.